

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2021-324-WS - ORDER NO. 2022-243
APRIL 11, 2022

IN RE: Application of Kiawah Island Utility,) ORDER DENYING
Incorporated for Adjustment of Rates and) PETITION FOR
Charges (Increase) and Modifications to) REHEARING AND
Certain Terms and Conditions for the) RECONSIDERATION
Provision of Water and Sewer Service) AND APPROVING
) ALTERNATE
) PROCEDURE

I. INTRODUCTION

This matter comes before the Public Service Commission of South Carolina (“the Commission”) on the Petition for Rehearing and Reconsideration of Commission Order No. 2022-161, which was filed by Kiawah Island Utility, Incorporated (“KIU”).

II. ANALYSIS

KIU asserts that the Commission should rehear and reconsider its Order No. 2022-161 and grant KIU’s Motion for a Protective Order to prevent disclosure of its employees’ compensation protected by S.C. Code Ann. Section 30-4-40(a)(2). In the alternative, KIU seeks leave to prefile revised direct testimony omitting its employees’ compensation but including total amounts for Human Resources and Facilities functions which incorporate the compensation at issue.

As background, in its original Motion for Protective Order dated January 27, 2022, KIU sought to have limited portions of the direct testimony of Mujeeb Hafeez filed in this Docket as confidential. This testimony discusses salary information of individual employees which KIU described as confidential personal information protected from disclosure by S.C. Code Ann. Section 30-4-10 et seq. and otherwise protected by law.

Specifically, Mr. Hafeez addressed the costs of two corporate functions which operate with a single employee each: the Human Resources function and the Facilities function. KIU proposed to redact the compensation of these SouthWest Water Company employees, and therefore, protect their privacy.

The Commission, in Order No. 2022-161, rejected the argument that this information was “personal,” and that the privacy of the employees’ compensation needed to be protected, because, among other reasons, KIU is a public utility, which must undergo public scrutiny during its rate cases. The Commission found that no unreasonable invasion of personal privacy would occur upon public disclosure of the information on salaries, benefits, or other outside services in this case. The Commission denied the Protective Order filed on January 27, 2022.

On reconsideration, KIU reiterates its rejected arguments that compensation is information of a personal nature that should be protected. This argument remains unavailing. In addition, KIU does argue that to the extent that KIU has an interest in preventing its competitors from learning KIU’s salary scale for senior management, the salary of the Senior Vice President is a “trade secret” under S.C. Code Ann. Section 30-40-40(a)(1). The language of the statute contradicts that argument, since it defines “trade

secrets” as “unpatented, secret, commercially valuable plans, appliances, formulas, or processes...” *Id.* For public bodies that market services or products in competition with others, “trade secrets” also include feasibility, planning, and marketing studies, marine terminal service and nontariff agreements and evaluations and other materials which contain references to potential customers, competitive information, or evaluation.” Again, this language is certainly not applicable in the present case, so the salary information is not a “trade secret.” Accordingly, the first section of the Petition of KIU addressing “personal” exemptions and “Trade Secrets” must be denied.

However, in the alternative, KIU moves for an order of this Commission authorizing KIU to file and serve revised direct testimony from Mr. Hafeez which discloses the total costs of the Human Resources and Facilities functions while omitting testimony which would reveal the compensation of the two employees in question. The total costs figures for the two functions would include the compensation information for the two employees without specifically revealing it. KIU filed the proposed revised testimony of Mr. Hafeez with their Petition. This Commission believes that the alternative request in the Petition should be granted.

There is no prejudice to the parties in allowing Mr. Hafeez to file revised testimony omitting compensation detail for the two employees, since the total function costs include the compensation costs proposed. No party has objected to this alternate procedure, and the Commission approves its adoption, and allows the filing of the alternate testimony by Mr. Hafeez.

Accordingly, the Commission makes the following:

III. FINDINGS OF FACT

1. Commission Order No. 2022-161 rejected KIU's request for a Protective Order for the compensation information of employees in the Human Resources and the Facilities functions.

2. In its Petition for Rehearing and Reconsideration, KIU reiterates its claim that the compensation information for the Human Resources and the Facilities functions is "personal" and requires an exemption from public viewing pursuant to the South Carolina Freedom of Information Act.

3. KIU claims that portions of this compensation information is a "Trade Secret."

4. The claims that compensation is "personal" and/or a "Trade Secret" are rejected in the present scenario.

5. The alternate plan proposed by KIU in which KIU discloses the total amount of the Human Resources and the Facilities functions, including the compensations amounts, is reasonable, and should be adopted.

IV. CONCLUSIONS OF LAW

1. The first part of the Petition for Rehearing and Reconsideration, wherein KIU describes the compensation information as constituting "personal information," and therefore constituting a Freedom of Information Act exception is once again rejected.

2. The information KIU is requesting to protect is not a "Trade Secret" under S.C. Code Ann. Section 30-4-40(a)(1).

3. The Petition for Rehearing and Reconsideration addressing the “personal nature” of compensation, and also deeming it a “Trade Secret” should be denied.

4. There is no prejudice to the parties in allowing the witness to file revised testimony omitting compensation details for the two employees.

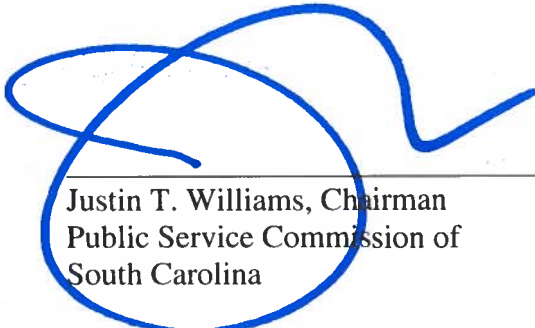
V. ORDERING PARAGRAPHS

1. The Petition for Rehearing and Reconsideration, which describes the compensation as “personal” and a “Trade Secret” is denied.

2. The alternate plan allowing Mr. Hafeez, a witness for Kiawah Island Utility, Incorporated, to file revised testimony considering the total amounts for the Human Resources and Facilities functions is granted. Such testimony shall be filed as soon as possible after issuance of this Order.

3. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:



Justin T. Williams, Chairman
Public Service Commission of
South Carolina